No. 78-827

FILED
MAR 1 1979
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1978

GROS VENTRE TRIBE OF THE FORT BELKNAP INDIAN RESERVATION, MONTANA, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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OPINION BELOW

The opinion of the court of appeals (Pet. App. A-1 to A-21) is reported at 581 F.2d 1314.

JURISDICTION

The judgment of the court of appeals was entered on July 18, 1978. A petition for rehearing and rehearing en banc was denied on September 13, 1978.

The petition for a writ of certiorari was filed on December 11, 1978. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a case or controversy was presented by this dispute over allocation of funds appropriated by Congress to pay an Indian Claims Commission judgment, and whether Congress acted within its constitutional power in setting the eligibility requirements it did for participation in the distribution.

STATUTE INVOLVED

The distribution statute of March 18, 1972, Pub. L. No. 92-254, 86 Stat. 64, 25 U.S.C. 1262, provides in pertinent part:

> The sum of $2,100,000 from the funds credited to the Gros Ventre Tribe under section 1 of this Act shall be distributed per capita to all members of the Fort Belknap Community who were born on or prior to and are living on the date of this Act and (a) whose names appear on the February 5, 1937, payment roll of the Gros Ventre Tribe of the Fort Belknap Reservation, or (b) who are descended from a person whose name appears on said roll, if such member possesses a greater degree of Gros Ventre blood than Assiniboine blood.

STATEMENT

In August 1968, the Indian Claims Commission entered a judgment for more than $8 million in favor of the Blackfeet and Gros Ventre Tribes (19 Ind. Cl. Comm. 363). Congress subsequently appropriated funds to pay the judgment (Pub. L. No. 90-608, 82 Stat. 1190, 1198), and enacted a statute providing for *per capita* distribution and identifying the persons to whom the distribution should be made. Pub. L. No. 92-254, 86 Stat. 64, 25 U.S.C. 1262. The recipients were identified as all members of the Fort Belknap Community, living on the date of the Act, whose names appeared on the 1937 tribal payment roll or who were descended from persons whose names appeared on that roll, so long as such member possessed a greater degree of Gros Ventre blood than Assiniboine blood.

Two lawsuits have arisen concerning the eligibility of competing groups of Indians to participate in the fund. We rely on the court of appeals' chronicle of the first suit (Pet. App. A-2 to A-7), which resulted in a court of appeals decision (514 F.2d 897) affirming the district court's ruling in favor of the "Azure Group" of claimants but reversing, as not properly part of the case, the district court's order denying any allotment to the "Adams Group." The present litigation, the second suit, was brought by the Adams plaintiffs against the Secretary of the Interior and others to require the Secretary to allow plaintiffs to participate in the fund and to recover reasonable attorneys' fees. The defendants conceded plaintiffs' right to recover from the fund but contested the issue of attorney fees. Before entertaining a motion for summary judgment, the district court ordered that petitioner, a tribe some of whose members may be eligible participants in the fund, be notified and given

an opportunity to be heard on objections to the participation of the Adams group. Petitioner was notified and filed a ten-page objection and brief and appeared by counsel at the hearing on summary judgment. Petitioner contended that the statute requires that beneficiaries meet the Gros Ventre blood requirement for tribal membership (one-fourth Gros Ventre blood) and that the complaint was insufficient because it failed to allege that plaintiffs met this requirement. At the hearing, petitioner's counsel stated that petitioner wished to intervene and asked the court whether any further steps were necessary to perfect petitioner's participation as a party to the litigation. The court's response advised that nothing further was required and suggested that the court was already treating petitioner as a party (Pet. App. A-8 to A-9). The court, after argument, overruled petitioner's objection, held that the statute imposed no such blood requirement, and held that plaintiffs were entitled to participate in the fund in view of their uncontested allegations that they met the eligibility requirements expressly stated by the statute (Pet. App. B-1 to B-5).

Affirming, the Ninth Circuit held that petitioner had fully participated in the proceeding and consequently was bound by the district court's judgment. The court held that even though the Secretary and the Adams group agreed on the interpretation of the distribution statute, an actual controversy existed because the Secretary refused to distribute the funds until all claims were adjudicated by the courts. The

court further held that petitioner's participation created a controversy ripe for judicial determination. On the principal issue of the Adams group's right to share in the distribution, the Ninth Circuit held that the words of the statute were plain, clearly expressed the intent of Congress, and did not require membership in the Gros Ventre Tribe according to the one-quarter degree blood quantum criterion. Therefore, the Adams claimants were all "squarely within" the provisions of the distribution statute.

ARGUMENT

The decision of the court of appeals is correct and conflicts with no decision of any court of appeals or of this Court. The issues presented by petitioner do not warrant review by this Court.

1. Petitioner contends that this Court should grant review and order that all judgments below be vacated and the complaint dismissed because no case or controversy within the meaning of Article III ever existed between the Adams group and the defendants. Although the defendants did agree with the plaintiffs that the plaintiffs were entitled to participate in the fund, defendants disagreed with respect to other relief, such as the award of attorneys' fees (see Pet. App. B-4 to B-5). Thus, at the time of petitioner's intervention, a live controversy existed between the then parties to the suit.[1] Petitioner's

[1] The court of appeals properly concluded that petitioner had intervened in the district court proceedings (Pet. App. A-11 to A-12). *Roach* v. *Churchman*, 457 F.2d 1101, 1104 (8th Cir. 1972).

objection to the participation of the Adams group injected a new controversy regarding plaintiffs' eligibility to participate in the fund, even if it is assumed that no case or controversy had previously existed on that point. Petitioner actively litigated that controversy in the district court, in the court of appeals, and in this Court in its petition. Thus, a case or controversy has been present through all phases of this litigation. *Maryland Casualty Co.* v. *Pacific Co.*, 312 U.S. 270, 273 (1941); *Associated General Contractors of America, Inc.* v. *Laborers Int'l Union of North America*, 476 F.2d 1388, 1402-1403 (T.E.C.A. 1973). *Moore* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 47 (1971), relied on by petitioner, is distinguishable because there all of the parties were in total agreement, and no one intervened to create any disagreement regarding the relief sought by the plaintiff.

2. On the merits, petitioner no longer contends that the distribution statute requires that recipients meet the blood requirement for membership in the Gros Ventre Tribe (Pet. 7, 22-25). Petitioner argues that it has a vested interest in the judgment of the Indian Claims Commission and that Congress may not deprive it of that interest by allowing non-tribal members to participate in the recovery.

Congress, however, has the power to establish and to alter the distributional scheme for a tribal judgment award. The award is not an asset of the tribe in which any present tribal members have any vested property interest. *Delaware Tribal Business Comm.*

v. *Weeks*, 430 U.S. 73, 84 (1977); *United States* v. *Jim*, 409 U.S. 80, 82 (1972); *Winton* v. *Amos*, 255 U.S. 373, 391 (1921); *Cherokee Freedmen* v. *United States and the Cherokee Nation*, 195 Ct. Cl. 39, 48 (1971). The statute provides that persons who were on the Gros Ventre payment roll in 1937 and their descendents, who possess a greater degree of Gros Ventre blood than Assiniboine blood, may participate in the recovery so long as they are members of the Fort Belknap Community and were living on March 18, 1972. This distributional formula is a reasonable exercise of Congress's power to establish a distribution scheme for an Indian Claims Commission judgment.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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FEBRUARY 1979

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